

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN WATERLOO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BILLY GENE HOWARD,

Defendant.

No. CR 03-2024 LRR

**ORDER**

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***I. INTRODUCTION***

Defendant Billy Howard was charged with: (1) being a felon in possession of one or more firearms, in violation of 18 U.S.C. §§ 922(g) & 924(e); (2) possessing stolen firearms, in violation of 18 U.S.C. §§ 922(j) & 924(a)(2); and (3) being an unlawful drug user in possession of firearms, in violation of 18 U.S.C. § 922(g)(3). His jury trial was held September 30 and October 1, 2003. At the close of the government's case, Defendant moved for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29. The court denied Defendant's motion. At the conclusion of all the evidence, Defendant renewed his motion for judgment of acquittal and the court again denied the motion. On October 1, 2003, the jury returned a guilty verdict on all three counts. On October 17, 2003, Defendant filed a Motion for New Trial (docket no. 50) and a Motion for Judgment of Acquittal (docket no. 51).

***II. LEGAL ANALYSIS***

Included in the evidence presented at trial was the following:

Story City Police Officer Jerry Spencer testified he was contacted by dispatch on January 14, 2002 and directed to execute an arrest warrant for Jimmy Howard at the Viking

Motor Inn in Story City, Iowa. He was told to look for a brown Chevy van, license plate 164JBT, in the parking lot. After Officer Spencer arrived at the motel, Dawn Hanawalt approached him and they spoke in his car while they waited for the van to return. Officer Spencer observed a van with that description drive in and park in the lot. He confirmed the license plate number with dispatch. Officer Spencer observed the driver sit in the vehicle for a few minutes and then get out and pace in front of the building. Officer Spencer observed the individual eventually enter the motel. Deputy Mike Waldbilig and Reserve Deputy Adam Doran arrived as backup. Deputy Doran remained in Deputy Waldbilig's vehicle in the parking lot. Officer Spencer parked his squad car behind the van and followed Deputy Waldbilig into the motel through the same door he had seen the driver of the van enter. Once the officers entered the building, they confronted the defendant. Officer Spencer asked the defendant if his name was Billy. When the defendant responded affirmatively, Officer Spencer placed Defendant at gunpoint and told him the officers were there to execute an arrest warrant for his brother, Jimmy Howard. The officers then frisked Defendant for their safety. During the frisk, Officer Spencer felt something he believed to be a knife and withdrew it from Defendant's pocket. The object was a glass pipe, so Officer Spencer arrested Defendant for possession of drug paraphernalia. Officer Spencer then conducted a full search of Defendant incident to his arrest. He found a two-way radio inside Defendant's pocket set to channel seven.

During their interaction with Defendant, the officers also found a key to room 51. The officers had an arrest warrant for Jimmy Howard and reasonably believed he was staying in room 51 based on Ms. Hanawalt's statements. The three individuals went to room 51. Deputy Waldbilig knocked on the door and announced he was with the sheriff's office a few times but no one answered the door. Officer Spencer then took the room key from Defendant and opened the door, while announcing they were with the sheriff's office and police department, with no response. When they entered the room, they saw Jimmy

Howard lying on a bed. The officers observed numerous items of drug paraphernalia and counter-surveillance items.<sup>1</sup> The officers arrested him and searched him incident to arrest. During the search, they found a film canister with a substance that reassembled rock methamphetamine and a plastic bag of a substance similar to that of marijuana. The officers then searched the brown Chevy van. In the van the officers found a cell phone, a fuse case believed to contain methamphetamine, a Mossberg .410 caliber shotgun with no serial number and an IGA 20 gauge shotgun bearing serial number 44024. The shotguns were found in soft cases underneath the last bench seat.

Officer Spencer testified he sent the substances to the DCI crime lab for analysis. He testified to the analysis after the government offered the self-authenticating document. The technician had analyzed the substances Officer Spencer had seized from Jimmy Howard and determined the rock was methamphetamine and the plant substance was marijuana. The popcorn jar was analyzed and it contained methamphetamine. The fuse case seized from the van was found to contain methamphetamine.

Dawn Hanawalt testified she was Jimmy Howard's girlfriend. She testified Billy Howard was driving Jimmy Howard to Mexico to evade arrest. They picked up Ms. Hanawalt at a trailer park in New Hampton, Iowa and she rode with them in the van to the Viking Inn Motel. They thought she was going with them to Mexico, but she was working with law enforcement. Ms. Hanawalt testified Defendant was very nervous on the trip. At one point, he told Ms. Hanawalt if the police chased them, she had better hang on because he would not stop. The three smoked methamphetamine and marijuana while traveling in

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<sup>1</sup> The officers observed two boxes of Reynolds wrap, two pocket knives, another two-way radio set to channel seven, a butane torch, butane fuel cans, a metal pipe often used to smoke marijuana, another glass pipe, binoculars, a cell phone, a popcorn jar containing a white sludge and smelling of anhydrous ammonia, a police scanner, a BB gun, propane canisters, plastic tubing, table salt, and liquid fire. A large wooden box with a false bottom contained a digital scale, a brass balance scale, and a coffee grinder.

the van. When they arrived at the Viking Motor Inn, Defendant rented the room. Ms. Hanawalt took her few possessions into the motel. Defendant and Jimmy Howard unloaded the rest of the items from the van and took them into the motel room. Once the van was unloaded, the three smoked methamphetamine in the room. Later, Defendant left. Ms. Hanawalt believed he left to purchase anhydrous ammonia. At the same time, Ms. Hanawalt left the motel and went to a gas station to find a phone to alert the police to their location. While she was waiting outside, she saw and spoke with Officer Spencer.

Kathleen and Ronald Beise testified they observed the defendant's van arrive on January 14, 2002 at the Viking Motor Inn. Mr. Beise had seen Ms. Hanawalt fall when she exited the van and asked if she was alright. She did not answer at first, so he asked again and she mumbled a response. Both remembered seeing the two men unloading the van very fast. Mrs. Beise thought they acted like they were being chased.

Leon Wessels testified his home in Cedar Falls, Iowa, was burglarized August 23, 2001. A five-disk CD player and two shotguns had been taken. Mr. Wessels confirmed the two shotguns seized from the brown Chevy van were his.

Russ Foth testified he lived next door to Mr. Wessels in 2001. On the morning of August 23, 2001 he went for a run through his neighborhood at about 5:00 a.m. He noticed a tan Chevy or GMC van idling in front of a house under construction. He testified the picture of the van at the Viking Motor Inn showed a van that looked like the one he observed the morning of August 23, 2001. He saw the same van idling behind Mr. Wessels' house when he was returning home. He testified he knew it was the same van he had at the construction site because it had a loud muffler and emitted lots of smoke. Mr. Foth did not see any other vehicles that morning. He testified that due to the early time of his daily run, it was unusual to see any vehicles.

Lawrence Fullie testified he met the defendant while they were incarcerated together at the Linn County Jail. Defendant told Mr. Fullie that he and "Brian" had broken into a

house in Cedar Falls and taken two shotguns. Defendant told Mr. Fullie the guns had been in his van for several months prior to their conversation.

Percy Bruce testified he was present when Defendant told Mr. Fullie about his case. Mr. Bruce overheard the defendant tell Mr. Fullie that he was going to blame Jimmy Howard for having the guns in the van because Defendant had worn gloves when stealing the guns, so they would not have his fingerprints.

The government's counsel read into the record two stipulations between the parties. The parties agreed the interstate nexus and prior felony elements of the crimes were satisfied. Specifically, the parties stipulated the two firearms were manufactured outside of the state of Iowa and crossed a state line at some point prior to arriving in the state of Iowa. Further, the parties stipulated Defendant had four prior felony convictions.

#### ***A. Motion for New Trial***

Federal Rule of Civil Procedure 33 provides, in pertinent part, that a court “on motion of a defendant may grant a new trial to that defendant if required in the interest of justice.” Fed. R. Crim. Proc. 33. Under Rule 33, district courts are granted broad discretion in considering motions for a new trial. *United States v. Wilkins*, 139 F.3d 603, 604 (8th Cir. 1998). A district court may “weigh the evidence, disbelieve witnesses, and grant a new trial even where there is substantial evidence to sustain the verdict.” *United States v. Campos*, 306 F.3d 577, 579 (8th Cir. 2002) (quoting *White v. Pence*, 961 F.2d 776, 780 (8th Cir. 1992)). However, unless the district court “ultimately determines that a miscarriage of justice will occur, the jury’s verdict must be allowed to stand.” *Id.* (citing *United States v. Lacey*, 219 F.3d 779, 783 (8th Cir. 2000)); see also *Ortega v. United States*, 270 F.3d 540, 547 (8th Cir. 2001) (noting that a district court may grant a new trial under Rule 33 “only if the evidence weighs heavily enough against the verdict that a miscarriage of justice may have occurred.”).

The Eighth Circuit Court of Appeals has noted that district courts enjoy more latitude

in granting new trials under Rule 33 than in granting motions for acquittal under Rule 29. *Campos*, 306 F.3d at 579. However, “[m]otions for new trials based on the weight of the evidence are generally disfavored,” and therefore district courts should exercise their Rule 33 authority “sparingly and with caution.” *Id.*; see also *United States v. Lincoln*, 630 F.2d 1313, 1319 (8th Cir. 1980) (“This authority [to grant a new trial] should be exercised sparingly and with caution . . . .”); 3 *Federal Practice and Procedure* § 553, at 248 (2d ed. 1982) (Granting a new trial under Rule 33 is an unusual remedy that is reserved for “exceptional cases in which the evidence preponderates heavily against the verdict.”).

Defendant contends a miscarriage of justice occurred such that the interests of justice require the court’s intervention. Specifically, Defendant alleges the evidence connecting him with the burglary in Cedar Falls was insufficient and the evidence indicated Jimmy Howard, rather than Defendant Billy Howard, was responsible for the guns being in Defendant’s van. Defendant’s Motion, therefore, is based on the weight of the evidence. Based on the evidence presented to the jury at trial as highlighted above, the court finds the evidence does not preponderate against the verdict to a sufficient degree that the Court concludes a miscarriage of justice occurred.

## ***B. Motion for Judgment of Acquittal***

### ***1. Legal Standard***

Rule 29 of the Federal Rules of Criminal Procedure provides, in pertinent part, as follows:

\*\*\*[T]he court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction.\*\*\*

Fed. R. Crim. Proc. 29(a). However, it is well-settled that “[j]ury verdicts are not lightly overturned.” *United States v. Hood*, 51 F.3d 128, 129 (8th Cir. 1995); *citing United States v. Burks*, 934 F.2d 148, 151 (8th Cir. 1991). In fact, the case law concerning motions for judgment of acquittal makes it difficult for a district court to overturn a jury's verdict. A judgment of acquittal should only be granted “if there is no interpretation of the evidence that would allow a reasonable jury to find the defendant guilty beyond a reasonable doubt.” *See United States v. Gomez*, 165 F.3d 650, 654 (8th Cir. 1999). In determining whether to grant a motion for judgment of acquittal, the court may not weigh the evidence nor evaluate the credibility of witnesses, as that task lies exclusively within the province of the jury. *United States v. Ireland*, 62 F.3d 227, 230 (8th Cir. 1995).

Defendant contends that the government's evidence was not sufficient to support a finding of guilt by a reasonable jury and accordingly, his motion for judgment of acquittal should be granted. In considering a motion for judgment of acquittal based on the sufficiency of the evidence, the court must “view the evidence in the light most favorable to the guilty verdict, giving the government the benefit of all reasonable inferences that may be drawn from the evidence.” *United States v. Basile*, 109 F.3d 1304, 1310 (8th Cir. 1997). The court can overturn a jury's verdict only if “‘a reasonable fact-finder must have entertained a reasonable doubt about the government's proof’” of one of the essential elements of the crime charged. *United States v. Kinshaw*, 71 F.3d 268, 271 (8th Cir. 1995)

(quoting *United States v. Nunn*, 940 F.2d 1128, 1131 (8th Cir. 1991)). Moreover, “[t]his standard applies even when the conviction rests entirely on circumstantial evidence.” *United States v. Davis*, 103 F.3d 660, 667 (8th Cir. 1996).

## **2. Sufficiency of the Evidence**

In order to convict Defendant of the crime of being a felon in possession of a firearm, as charged in Count 1 of the Indictment, the government had to show beyond a reasonable doubt: (1) Defendant had been convicted of a crime punishable by a term of imprisonment exceeding one year; (2) Defendant thereafter knowingly possessed a firearm; and (3) the firearm was transported across a state line at some time during or before the defendant’s possession of the firearm. Based on the evidence presented to the jury at trial as highlighted above, the court finds sufficient evidence from which a reasonable jury could find Defendant guilty of being a felon in possession of a firearm.

In order for the jury to convict Defendant of the crime of possessing a stolen firearm, as charged in Count 2 of the Indictment, the government had to prove beyond a reasonable doubt: (1) Defendant knowingly possessed a firearm; (2) the firearm was stolen during or before the defendant’s possession of it; (3) the defendant knew or had reasonable cause to believe that the firearm was stolen at the time he possessed it; and (4) the firearm was transported across a state line at some time during or before the defendant’s possession of it. Based on the evidence presented to the jury at trial as highlighted above, the court finds sufficient evidence from which a reasonable jury could find Defendant guilty of possessing a stolen firearm.

In order for the jury to convict Defendant of the crime of being an unlawful drug user in possession of a firearm, as charged in Count 3 of the Indictment, the government had to prove beyond a reasonable doubt: (1) Defendant was an unlawful user of a controlled substance, that is, methamphetamine; (2) the defendant knowingly possessed a firearm; and (3) the firearm was transported across a state line at some time during or before the



defendant's possession of it. Based on the evidence presented to the jury at trial as highlighted above, the court finds sufficient evidence from which a reasonable jury could find Defendant guilty of being an unlawful drug user in possession of a firearm.


Viewing the evidence in the light most favorable to the verdict, and giving the government the benefit of all reasonable inferences, the court finds that there is sufficient evidence in the record to support the jury's verdict. It was the responsibility of the jury to evaluate the credibility and testimony of the witnesses. Defendant's argument does not "raise a doubt so persistent as to cloud the presumed validity of a jury verdict. It is not necessary for the evidence before the jury to rule out every reasonable hypothesis of innocence. It is enough that the entire body of evidence be sufficient to convince the fact-finder beyond reasonable doubt of the defendant's guilt." *United States v. Swayne*, 700 F.2d 467, 472 (8th Cir.1983). Accordingly, the court will not overturn the jury's verdict.

### ***III. CONCLUSION***

#### **IT IS ORDERED:**

- (1) The court **DENIES** Defendant's Motion for New Trial (docket no. 50).
- (2) The court **DENIES** Defendant's Motion for Judgment of Acquittal (docket no. 51).

**DATED** this 7th day of January, 2004.

  
LINDA R. READE  
JUDGE, U. S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA